IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2007

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
AND
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

Tax Case(Appeal) No.1307 of 2007

M/s P.S.Govindasamy Naidu & Sons
Charities, Peelamedu, Coimbatore. .. Appellant / Respondent

versus

The Assistant Commissioner of Income Tax
Circle II, Coimbatore. .. Respondent / Respondent

TAX CASE APPEAL filed under Section 260 A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'D' Bench, Chennai dated 21.10.2005 in ITA No.110/Mds/2002 as against the order of the Commissioner of Income Tax (Appeals) II Coimbatore in I.T. Appeal No.299C/98-99 dated 29.10.2001 and against the order of the Assistant Commissioner of Income Tax, Circle II, Coimbatore in PAN/GIR No.AT0002 dated 24.3.1998 for the assessment year 1995-96.

For Appellant : Mr.C.V.Rajan for
M/s Subbaraya Aiyar Padmanabhan

J U D G M E N T

(Judgment of the Court was delivered by CHITRA VENKATARAMAN,J)

The tax case filed at the instance of the assessee relating to the assessment year 1995-96 seeks admission on the following questions of law:-

"1. Whether the Appellate Tribunal was right in law in holding that the Appellant Trust existed only for the purpose of profit and not solely for the educational purposes and hence not entitled to exemption under Section 10(22) of the Act when the claim of exemption was upheld by the Tribunal for the earlier years?

2. Whether on the facts and circumstances of the case the Appellate Tribunal was right in law in holding that the contribution received towards corpus are not voluntary and hence form part of taxable income?

3. Whether on the facts and circumstances of the case the Appellate Tribunal was right in

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law in holding that the contribution received by the Trust is not exempt under Sec.10(22) when the Trust has utilised the entire receipt for the purpose of running educational institutions?"

2. The facts of the case culminated in the filing of the present appeal proceeds as follows:-

The assessee is a Public Charitable Trust running several educational institutions. In respect of the assessment year 1995-96, the assessment under Section 143(3) was completed determining the total income at Rs.2,22,45,740/-. While considering the assessment, the Assessing Officer brought to tax the amount received from the students admitted to the College but credited towards the Corpus of the Trust under Section 2(24)(iia) of the Income Tax Act, 1961, taking the view that these 'donations' were not voluntary, but were received as capitation fee for admission into the College and consequently, the Assessing Officer rejected the plea for exemption under Section 10(22) of the Income Tax Act, 1961. Aggrieved by the said order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals). By an order dated 29.10.2001, the Commissioner of Income Tax (Appeals), however granted the relief, following the earlier orders passed in the same assessee's case. The Revenue preferred appeal before the Income Tax Appellate Tribunal. By an order dated 21.10.2005, the Tribunal allowed the appeal of the Revenue holding that the assessee is not entitled to have the benefit of exemption under Section 10(22) of the Income Tax Act. The Tribunal held that the basis of the orders passed in the earlier years and relied on by the assessee, and the relief granted by the Commissioner of Income Tax (Appeals) were distinguishable from the facts of the year under consideration and that each year had to be considered separately. In the course of considering the plea of the assessee, the Tribunal pointed out that in all the earlier years, there was no dispute regarding the nature of receipt as donations, but in the present case, the dispute was purely one as regards capitation fees paid by the students at the time of admission. In such circumstances, the Tribunal held that the assessee was not entitled to have the benefit of the orders passed for the earlier years granting the exemption. The Tribunal also found that the contributions received by the assessee trust in the shape of capitation fees is not voluntary one and hence, cannot be called as donation.

3. The learned counsel appearing for the assessee submitted that for the purpose of considering the application of Section 10 (22) of the Income Tax Act, 1961, the question of voluntary character has no relevance at all, and as such, the Tribunal committed an erroneous interpretation as regards the provision of Section 10(22) of the Income Tax Act, 1961, to deny the relief.

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4. It is seen from the order of the Assessing Authority that on an examination of a random number of parents who admitted the children into the college, it was found that the amount paid was

not to the Corpus donation account, but it was collected only by way of capitation fee. The assessee treated it on its own as corpus donation and issued receipts as Corpus Donation and credited it under the Corpus Donation account. The Assessing authority rightly held that it is immaterial how the recipient, namely the assessee herein, accounted for the same and issue receipts towards charitable purpose at the time of receipt of the income. Admittedly, it was towards capitation fee. In such circumstances, the Assessing authority rightly rejected the contention of the assessee that the contribution by the parents towards capitation fee could not be characterised as voluntary payment to be credited under the head "Corpus Donation". It is also seen that the Assessing Authority referred to the decision of the Income Tax Appellate Tribunal, 'B' Bench, Bombay in a similar circumstance, wherein it was held that the donation given for material gain for securing admission could not be characterised as donation towards charitable purpose, and as such, the assessee is not entitled to have the benefit.

5. A perusal of the Commissioner of Income Tax (Appeals) shows that it merely applied the decision made in earlier years to grant the relief and considered the payment as a voluntary contribution and hence exempted under Section 11(1)(d). However, going by the statement recorded from the parents, rightly the Tribunal came to the conclusion that these amounts were in fact paid only by way of capitation fee and not towards Corpus account of the Assessee

Trust. In the absence of any material to disturb this fact, we do not find any merit in the submission made by the learned counsel for the assessee that the provisions namely Section 10(22) of the Income Tax Act, 1961, really call for an interpretation before this Court. In the face of an admitted fact that the amount was paid only towards capitation fee, we find no justification to accept the plea of the assessee that the matter has to be admitted on the question of interpretation.

6. In the course of argument, the learned counsel for the assessee relied on the decision of the Andhra Pradesh High Court in the case of Governing Body of Rangaraya Medical College vs. Income Tax Officer, A.Ward, Circle I, Kakinada reported in 117 ITR 285, wherein the case of the assessee was allowed on the simple ground that the High Court found that the Income Tax Officer has not recorded any finding, nor was it suggested in the counter that any surplus arising from the operations of the institutions is distributed by way of profit to any individuals. It must be noted that the nature of quality of the receipt has to be adjudged as at the time of receipt. The subsequent act of the assessee to enter the same under some head on receipt cannot alter the quality of the receipt.

7. Having regard to the fact that the amount that had been received was under capitation fee, it could not be characterised as donation. Since it does not involve any interpretation as regards Section 10(22) of the Income Tax Act, 1961, we do not find

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any justification to admit this case. In such circumstances, the Tax Case Appeal is rejected at the admission stage itself and is accordingly dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

rg/ksv

To:

1. The Assistant Registrar
Income tax Appellate Tribunal
Rajaji Bhavan, III Floor,
Besant Nagar, Chennai.

2. The Commissioner of Income Tax,
(Appeals) II, Coimbatore

3. The Assistant Commissioner of Income Tax
Circle II
Coimbatore

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